LEGISLATIVE DIGEST
HOUSE REPUBLICAN CONFERENCE | CHAIRMAN MIKE PENCE
1420 LONGWORTH HOB, WASHINGTON, DC 20515 www.GOP.gov PHONE 202.226.2302 FAX 202.226.0154

H.R. 1–The American Recovery and Reinvestment Act of 2009

FLOOR SITUATION

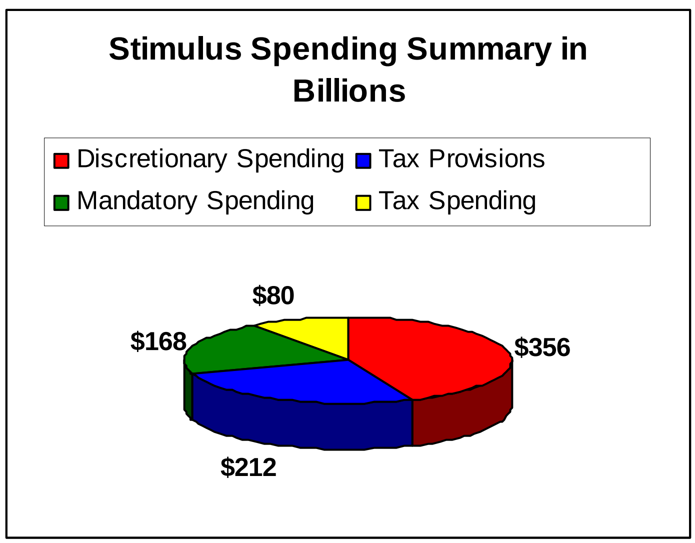
The American Recovery and Reinvestment Act is scheduled to be considered on the floor on Wednesday, January 28, 2009, likely under a structured rule. The House Committee on Rules is scheduled to meet and report the rule on Tuesday, January 27.

The legislation contains three distinct sections which were considered and reported last week by three committees. The Appropriations Committee reported the discretionary spending provisions of the bill by a party-line vote of 35-22. The Ways and Means Committee reported H.R. 598, containing the bill's spending provisions, by a party-line vote of 23 to 14. The Energy and Commerce Committee reported H.R. 629, including, among other things, health care provisions for unemployed workers and increased Medicaid aid to States, by voice vote.

SHORT SUMMARY AND SPENDING ANALYSIS

The American Recovery and Reinvestment Act of 2009 is an omnibus spending bill containing $816 billion in new spending and tax provisions which the Democrat Majority has characterized as a "concerted effort to create and save 3 to 4 million jobs, jumpstart our economy, and begin the process of transforming it for the 21st century." The bill includes $524 billion in spending provisions—$355.9 billion in new discretionary spending for domestic programs and $169 billion for mandatory spending—and $291.7 billion in tax provisions, which includes $79.9 billion in spending on refundable tax credits.

Discretionary Spending: The legislation's spending portion contains $355.9 billion in discretionary domestic spending to expand existing programs throughout the federal government. Spending meant to stimulate the economy under this title includes funding for a wide variety of programs ranging from climate change research, federal building repair, the National Endowment for the Arts, the Federal Highway Administration, AmeriCorps, and nurse and physician training. The funds from this title are distributed to federal agencies and the State Stabilization Trust Fund.



Democrat leaders have repeatedly emphasized the need for the discretionary domestic spending in the legislation to be distributed in a timely manner in order to create jobs through government programs and federal works projects. Both President Obama and Speaker Pelosi have reiterated their intention to see that 75% of the spending is paid out within 18 months. However, the Congressional Budget Office (CBO) has determined that only $144.7 billion (40.7%) of the discretionary funds in the bill would be expended by the end of 2010. The CBO report also found that only a small amount of funds for many of the most high-profile infrastructure spending items in the Democrat bill—which were planned to save or create three million jobs over the next two years—will be paid-out by 2011. In fact, the majority of the discretionary spending in the bill will be expended after 2010.

Mandatory Spending: In addition to the $355.9 billion in new discretionary funding, the bill includes approximately $168 billion in new mandatory spending, which does not include $79.9 billion for refundable tax credits that CBO scores as direct spending. The majority of the mandatory spending in the legislation provides increased federal benefits for unemployed workers, including an extension of unemployment insurance (UI), Medicaid coverage for unemployed individuals, and federal subsidies to employers to cover former workers. The bill would provide an across-the-board increase of 4.9% for the federal share of Medicaid spending through the Federal Medical Assistance Percentage (FMAP) until December 31, 2010. The bill also includes increased spending for the Temporary Assistance to Needy Families (TANF) program. The bill would allow States to increase the number of individuals on their TANF welfare rolls without increasing the number of individuals required to be working.

While theses individual provisions may have merit, the mandatory spending increases that are packed into the bill are focused on federal aid and are unlikely to jumpstart the economy. Instead, the majority of these provisions provide federal subsidies to states and federal assistance to unemployed individuals. Members may also be concerned that spending on government programs is seldom reduced and, though these mandatory spending increases are technically "temporary," it may be very difficult to bring these programs back to their current funding levels.

Tax Provisions: The bill also includes $291.7 billion in tax provisions, which includes $79.9 billion in direct spending on refundable tax credits. As the centerpiece of these tax measures, the legislation creates a new temporary refundable tax credit of $500 for individuals and $1,000 for married couples filing jointly in 2009 and 2010. The bill would also expand eligibility for refundable earned income tax credits (EITC), expand the amount of the EITC for families, and make a portion of the Hope Scholarship tax credits refundable. In total, $171.5 billion of the bill's tax provisions would go to programs based on refundable tax credits, which require the government to make direct payments to taxpayers if the credit is more than the a taxpayer owes in federal income taxes. The refundable spending, which is scored by CBO as direct spending, totals $79.9 billion over five years. Unlike long-term, growth-oriented tax cuts that have been offered by Republicans as an alternative to this plan, these refundable tax credits are more akin to increased spending through the tax code.

Possible Member Concerns: In the weeks since the Democrat stimulus plan began to take shape, many Members have expressed a growing concern that the spending, though massive, is poorly focused, redistributive, and untimely. Many Members may be concerned that the legislation will dramatically increase federal spending and the record federal deficit—which must be paid by American workers either through increased borrowing or tax hikes—and fail to stimulate any long-term, sustainable economic recovery.

The following is a non-exhaustive list of spending details and provisions in the bill that may concern Republican Members.

> **Record Deficit Spending:** According to CBO, the federal deficit will rise to a record $1.2 trillion, or 8.3% of GDP, in 2009. Even without this massive bill, the deficit will be by far the highest on record nominally and as a percentage of GDP during peacetime, easily exceeding the previous record of 6% in 1983 and the highest New Deal level of 5.9% in 1934.
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> **Spending Not Immediate:** According to CBO, most of the $356 billion in discretionary spending provided will not actually be spent until after 2010. In fact, only 8.1% of the spending will take place in 2009.
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> **Questionable Spending Examples:** The stimulus spending plan includes funding for such questionable items: National Endowment for the Arts ($50 million), LIHEAP ($1 billion), the 2010

Census ($1 billion), Americorps ($200 million), Amtrak ($800 million), repairs at the Smithsonian ($150 million), NASA climate change research ($400 million), and ACORN ($10 million).

Cost Per Job: The President and Democratic leaders in Congress have indicated that the legislation will create or save over 3 million jobs in the next two years. If those projections were true, this bill would require approximately $275,000 of taxpayer money for every job created or saved. Some Members may believe that an $816 billion stimulus package should create far more than 3 million jobs.

Cost Per Household: According the Ways and Means Committee Republicans, this legislation increases the national debt by $6,700 for every American household and spends enough money to give every person in the nation $2,700.

Funds Relatively Few Roads and Bridges: Despite calls by Democrats for increased infrastructure spending to create jobs, a relatively small share of the total $825 billion package is devoted to transportation infrastructure—$44 billion or 5.3% and only $30 billion *or 3.6%* for highway construction.

Unsustainable Spending Expectations: The Democrats maintain that all of the spending will expire after two years and will not be assumed to continue long-term. However, these short-term increases will create enormous pressure to maintain these higher spending levels and thus avoid any "cuts." For instance, according to the House Appropriations Committee, the package creates 32 new programs, totaling $137 billion. Congress' track record for sun-setting programs is not impressive.

Excludes Parochial Schools: Among the increases in "green schools" spending included in the stimulus package, is language restricting any funding provided under the bill from going to schools "in which a substantial portion of the functions of the facilities are subsumed in a religious mission"—effectively restricting any private or religious school from receiving any funding under the "green schools initiative" grants.

Healthcare for Fired CEOs: The bill provides a state option to cover unemployed workers through their Medicaid programs. The bill also states that "no income or resources test shall be applied" to any eligible unemployed workers, therefore fired CEOs could obtain free health care benefits from the federal government.

State Government Bailout: The legislation directs billions to State governments, including $87 billion in Medicaid spending and $79 billion for the State Fiscal Stabilization Fund. According to the liberal Center on Budget and Policy Priorities, the total budget deficit for the states collectively for the remainder of Fiscal Year 2009 is $43 billion. Given that the federal government's Fiscal Year 2009 deficit is already projected at $1.186 trillion—or *27.5 times* greater than the *total* State shortfall—it is hard to understand why the Democrats would choose to further exacerbate the federal deficit, especially since most states are subject to balanced budget requirements whereas the federal government is not.

Corporate Welfare: Much of the spending—roughly $13 billion—could be construed as corporate welfare, which inevitably distorts the free market as private firms attempt to align their business models with the availability of government subsidies.

Impractical Spending: President Obama's incoming OMB Director, Peter Orszag issued a stern warning last year, that much of this $825 billion stimulus package will have little-to-no effect on the economy. Last year, while serving as the Director of CBO, Orszag stated that:

> Practically speaking, however, public works involve long start-up lags. Large-scale construction projects of any type require years of planning and preparation. Even those that are "on the shelf" generally cannot be undertaken quickly enough to provide timely stimulus to the economy….Some of the candidates for public works, such as grant-funded initiatives to develop alternative energy sources, are totally impractical for countercyclical policy, regardless of whatever other merits they may have. In general, many if not most of these projects could end up making the economic situation worse because they would stimulate the economy at the time that expansion was already well under way.

Non-Stimulutive Tax Provisions: The bill provides $171 billion for refundable tax-credits. Unlike across the board tax cuts, these temporary tax credits send refund payments directly to individuals, even if they pay no taxes. These refunds do little to spur growth, create more jobs, or stimulate the economy and are more similar to new spending through tax policy than actual tax cuts.

Future Tax Increases: The increased debt caused by this legislation will almost certainly be used by Democrats as a rationale for raising taxes in the future rather than cutting the program funding that is "temporarily" increased by the bill.

DETAILED SUMMARY

H.R. 1, the American Recovery and Reinvestment Act of 2009, is comprised of three sections of legislation that were separately considered by different committees. The first section of the bill contains $355.9 billion in discretionary spending authorizations. The second portion of the legislation includes a number of tax provisions with a total estimated cost of $291.7, which includes $79.9 billion in direct spending for refundable tax credits. The final section of the bill contains $168.1 billion in mandatory spending provisions, not including the $79.9 billion for refundable tax credits that CBO scores as direct spending. The discretionary appropriations are contained in Division A of the bill, while the tax and mandatory spending provisions are in Division B.

Division A—Appropriation Provisions

General Provisions

- Funds appropriated in this bill are generally available until September 30, 2010.
- $208.5 million is appropriated for various Inspectors General offices and an additional $25 million is included for salaries and expenses at the Government Accountability Office.
- The bill creates and appropriates $14 million an "Accountability and Transparency Board" to oversee the implementation of this Act. This legislation authorizes an indefinite level of staffing for the Board, with compensation to be determined by the Chairman of the Board.
- The bill contains "whistleblower" protections for contractors, including methods for United States district courts to grant compensatory and exemplary damages to such persons.

Agriculture, Nutrition, and Rural Development

- $253 million for repairing Department of Agriculture (USDA) facilities.
- $245 million to modernize the information technology system at the Farm Service Agency.
- $400 million for the Natural Resources Conservation Service (NRCS) to conduct flood prevention programs and rehabilitate damns.
- $200 million for the Rural Community Facilities Program. These funds go to localities, nonprofits, and Indian tribes for buildings, vehicles, and other equipment in rural areas.

- $100 million for Rural Business Programs. These programs provide loans to rural businesses, as well as funding for governments, nonprofits, and Indian tribes to develop small businesses.
- $1.5 billion in this bill for grants for rural water and waste disposal in areas with populations of 10,000 or less.
- $2.8 billion for rural broadband infrastructure development through the USDA's Rural Development project. The funding would be centered on providing grants to give private companies incentives to provide broadband access in rural areas.
- $100 million for information systems for the Special Supplemental Nutrition Assistance Program for Women, Infants, and Children.
- This title temporarily increases benefits under the Supplemental Nutrition Assistance Program. The bill authorizes "such sums as may be necessary" to increase this benefit, as well as $150 million for administrative expenses.
- The legislation makes all States eligible to participate in the Afterschool Feeding Program for At-Risk Children. This program provides dinners at afterschool programs, but currently only includes eight eligible States (DE, IL, MI, MO, NY, OR, PA, WV).

Commerce, Justice, Science

- $250 million for the Economic Development Assistance Program.
- $1 billion for the Bureau of the Census for expenses in conjunction to the 2010 decennial census.
- $350 million for State Broadband Data and Development Grants to support the "development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services." The program gives grants to entities that develop initiatives to track the availability of broadband services.
- $2.8 billion for new Wireless and Broadband Deployment Grants to subsidize the expansion of wireless and broadband access in "unserved and underserved areas."
- $650 million for Digital-to-Analog Converter Box Coupons and related activities surrounding the ongoing transition to digital television.
- $100 million for the National Institutes of Standards and Technology for Scientific and Technical Research and Services (STRS) programs including "remote sensing for climate change," green building technologies, and increased energy efficiency research.
- $300 million to construct research science buildings at colleges and universities, many of which have billion dollar endowments.
- $1 billion for the National Oceanic and Atmospheric Administration to fund habitat restoration, marine debris mitigation, procure climate sensors, and establish climate data records.
- $3 billion for Byrne Justice Assistance Grants (JAG) to provide increased funding to State and local law enforcement for a variety of purposes.
- $1 billion for the COPS hiring grant program.
- $400 million for NASA climate change research.
- $3 billion for National Science Foundation research programs, education, human resources, and construction expenses.

Defense

- $4.5 billion for the repair and modernization of Department of Defense facilities, as well as for "energy efficiency" investment at these sites.
- $350 million for Defense Department research into energy issues.

Energy and Water

- $4.5 billion for Army Corps of Engineers' civil construction projects, including maintenance, damn safety projects, construction, and regulatory costs.

- $500 million for water and related resources projects carried out by the Bureau of Water Reclamation (water reclamation and reuse projects, rural water projects).
- $18.5 billion for promoting energy efficiency and renewable energy research; the development of technologies including biomass and geothermal; grants to institutional entities for energy sustainability and efficiency; the Weatherization Assistance Program; Energy and Efficiency and Conservation Grant programs; the State Energy Program; and expenses for manufacturing advanced batteries.
- $4.5 billion for electricity delivery and energy reliability activities to modernize the electric grid, and to enhance security reliability of the energy infrastructure.
- $8 billion for the "Innovative Technology Loan Guarantee Program" for the cost of guaranteed loans to subsidize ongoing renewable technology projects.
- $2.4 billion for necessary expenses to carry out carbon capture and sequestration technology projects.
- $2 billion for energy efficiency and renewable energy improvements in the Department of Defense.
- $500 million for nuclear defense cleanup at sites of past nuclear activities.
- $3.2 billion in borrowing authority made available under the Federal Columbia River Transmission System Act.

Financial Services and General Government

- $7.7 billion for the Federal Buildings Fund for building and repairing, altering border facilities, and increasing energy efficiency and conservation.
- $600 million for the GSA to replace a portion of federal motor vehicles with plug-in and alternatives fuel vehicles.
- $426 million for the cost of direct loans and loan guarantees to small businesses through the Small Business Administration.
- Permits the SBA to guarantee up to 95% of qualifying small business loans made by eligible lenders.
- Provides the SBA with the authority to establish a Secondary Market Lending Authority to make loans "systemically" important to SBA secondary market broker-dealers who operate the SBA secondary market.

Homeland Security

Provides increased funding for U.S. Customs and Border Protection (CBP) salaries and expenses as follows:

- $100 million for CBP to replace 20 non-intrusive cargo detection technology systems to be deployed at sea ports of entry.
- $150 million for repair and construction of 43 inspection facilities at land border ports of entry.
- $500 million for the purchase of installation of explosive detection systems and emerging checkpoint technologies at airports across the nation.
- $150 million for the Coast Guard to alter or remove 12 obstructive bridges across the nation that are deemed to be hazardous to marine navigation.
- $200 million for emergency food and shelter programs operated by the Federal Emergency Management Agency (FEMA). Funds are distributed across the nation based on a formula that considers unemployment and poverty levels.

Interior and Environment

- $325 million for Bureau of Land Management construction, including priority road, bridge, and trail repair, critical deferred maintenance projects, facilities construction and renovation, hazardous fuels reduction, and remediation of abandoned mine or well sites.
- $300 million for Fish and Wildlife Service (FWS) construction including priority road and bridge repair, and replacement.

- $1.7 billion for projects to address deferred maintenance needs within the National Park System (NPS), including roads, bridges, trails, and for other infrastructure projects.
- $100 million to carry out cost share agreements for the NPS Centennial Challenge projects and programs. Funding would be used to match private donations to repair NPS facilities leading up to the Service's Centennial in 2016.
- $200 million for repair and restoration of facilities, equipment replacement and upgrades, including stream gages, seismic and volcano monitoring systems, national map activities, and other maintenance and improvement projects for the United States Geological Survey.
- $500 million for Bureau of Indian Affairs construction, including: the repair and replacement of schools, detention centers, roads, bridges, employee housing, and maintenance projects.
- $800 million for the Environmental Protection Agency's hazardous substance Superfund Remedial clean-up program.
- $200 million for the leaking underground storage tank trust fund program to fund cleanup activities.
- $8.4 billion for State and Tribal Assistance Grants to fund water infrastructure improvements.
- $650 million for U.S. Forest Service Capital Improvement and Maintenance including: reconstruction, capital improvement, decommissioning, and maintenance of forest roads, bridges and trails, alternative energy technologies, and energy efficiency enhancements.
- $850 million for wildland fire management.
- $550 million for the Indian Health Service's priority health care facilities construction projects and deferred maintenance, and the purchase of equipment and related services, including health information technology purchases.
- $150 million for repair, revitalization, and alteration of facilities owed or occupied by the Smithsonian.
- $50 million for the National Endowment for the Arts to fund projects and activities which preserve jobs in the non-profit arts sector.

Labor, Health and Human Services, and Education

- $4 billion for the Department of Labor for training and employment activities under the Workforce Investment Act. $2.7 billion of those sums would be made available for state grants, while $50 million would be allocated for YouthBuild, a youth and community development program.
- $120 million for the Community Service Employment for Older Americans program to subsidize part time work for low-income seniors.
- $500 million for state grants for State Unemployment Insurance and Employment Service Operations to provide reemployment services to UI claimants.
- $80 million for the Departmental of Labor to enforce worker protection laws.
- $500 million for Community Health Centers (CHCs) to fund health care services for low-income families and individuals.
- $1 billion for grants to CHCs to make facility repairs and purchase equipment.
- $88 million for the cost of leasing a new facility and moving the headquarters of the Public Health Service, which houses 2,500 federal employees.
- $600 million to double the federal amount spent for primary care physician and nurse training funding as "a key component of attaining universal health care reform." The Appropriations Committee Report notes that doctor shortages have been experienced in states trying to implement universal coverage.
- $462 million for new equipment, renovations, and construction at the Centers for Disease Control Atlanta-based research and training facilities.
- $1.5 billion for grants to renovate National Institutes of Health (NIH) non-federal, university research facilities.
- $1.5 billion for the director of the NIH to provide grants to colleges and universities to conduct "high-risk, high-reward" scientific research with the goal of achieving scientific and medical breakthroughs.

- $500 million for repair and improvement projects at NIH buildings on the NIH campus.
- $1 billion for the Agency for Healthcare Research and Quality to conduct "comparative effectiveness research" regarding the effectiveness of different healthcare interventions.
- $1 billion to provide low-income home energy assistance through the Low-Income Home Energy Assistance Program (LIHEAP).
- $2 billion for Child Care and Development Block Grants to provide increased federal funding for child care services for low-income families.
- $3.2 billion in Children and Family Services Programs, including:
    - $2.1 billion for Head Start and Early Head Start programs that provide educational, health, social development, and nutrition services to low-income kids.
    - $1 billion for Community Service Block Grants to States to provide food, housing, health, and employment services to low-income families and individuals (including individuals without children).
    - $100 million for grants to States and public organizations for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency.
- $2 billion for the National Coordinator for Health Information Technology to support infrastructure needed to promote the electronic exchange and use of health care information.
- $900 million for Pandemic Flu, Biomedical Advance Research and Development (BARDA), and cyber security to provide additional funding to prepare for and respond to a future pandemic.
- $3 billion for the Prevention and Wellness Fund for immunizations and grants to States for prevention programs and resources at local public health departments.
- $13 billion for Title I education grants made to local educational agencies to provide supplemental education funding, especially in high-poverty areas. Title I grants also provide funding to States to award funds to Title I schools that do not adequately meet progress standards for two or more years.
- $100 million for Impact Aid to support school construction in local education areas with a high number of federally assisted students.
- $1 billion for the Department of Education to conduct school improvement projects through the Enhancing Education through Technology Program, which provides federal funding for technology hardware, software applications and professional development services.
- $200 million for the Teacher Incentive Fund for grants to State and local educational departments to provide financial incentives for teachers who raise student achievement.
- $13.6 billion for special education grants to assist States and territories meet the extra costs of providing special education to disabled children.
- $600 million for special education grants for States to provide early intervention services available to infants and families.
- $700 million for State grants for Vocational Rehabilitation Services and Disability Research.
- $15.6 billion for Pell Grants given to students through the Higher Education Act. The funds would be used to increase the maximum Pell Grant amount by $500, to $5,350 for the 2009 through 2010 academic year. According to the Committee Report, $15.6 billion would pay for the $500 increase for only two years.
- $50 million in new funds for the Student Aid Administration to increase staff.
- $100 million for Teacher Quality Enhancement State Grants program to fund teacher licensing reforms, provide alternative teacher preparation methods, and provide alternative avenues to obtaining state teacher certification.
- $250 million for the Institute of Education Sciences to make grants to States to develop data systems for measuring and reporting student achievement.
- $14 billion for the Department of Education to conduct K-12 "School Modernization" projects including renovations and repair. The funds would be disbursed based on Title I allocation formulas that require more money be spent in high-poverty areas.

- $6 billion for the Department of Education to conduct "Higher Education Modernization" projects, including renovations and repair, at colleges and universities. The funds would be distributed to States based on the number of full-time undergraduate students.
- $200 million for the Corporation for National and Community Service which makes grants to pay for volunteer programs through Senior Corps, AmeriCorps, and Learn and Serve America.
- $900 million for the Social Security Administration to build a new computer center and processing disability and retirement workloads.

Military Construction and Veterans Affairs

- $920 million for the Army, $350 million for the Navy and Marines, $280 million for the Air Force.
- $310 million for National Guard and Reserve military construction.
- $3.75 billion in defense-wide military construction.
- $300 million for military base closures.
- $950 million for the Department of Veterans Affairs medical facilities.
- $50 million for the National Cemetery Administration to carry out monument and memorial repair.

Department of State

- $276 million for the Department of State's Administration of Foreign Affairs Capital Investment Fund for a backup information management facility and cybersecurity initiatives.
- $224 million for the International Boundary and Water Commission for construction and repair of flood control levees.

Transportation, and Housing and Urban Developments

- $3 billion for the Federal Aviation Administration to make improvement grants to airports.
- $30 billion for highway infrastructure investment conducted through the Federal Highway Administration.
- $800 million to make capital grants to Amtrak for the purpose of reducing Amtrak's $10 billion capital backlog and increasing the speed and capacity of Northeast Corridor routes.
- $300 million to provide capital assistance grants to intercity passenger rail servers.
- $6 billion for the Federal Transit Administration to provide capital transit assistance grants to purchase busses and equipment needed to provide additional transportation services and to make improvements to transit facilities.
- $2 billion for the Federal Transit Administration to provide funds for fixed guideway infrastructure investment, including the purchase of track, line equipment, structures, signals, and power equipment.
- $1 billion for capital investment grants for light rail, commuter rail, and heavy rail lines made through the Federal Transit Administration.
- $5 billion for the Public Housing Capital Fund to be used for repair, construction, and safety improvement projects on public and Indian housing.
- $2.5 billion in grants for loans to owners of subsidized housing for the elderly, disabled, and poor to make energy efficient improvements.
- $500 million for Native American Housing Block Grants to housing services to low-income families and individuals in Native Americans.
- $1 billion for the Community Development Block Grant program to provide community services and housing opportunities and to give funds to local governments for infrastructure improvements.
- $4.2 billion for neighborhood stabilization activities related to emergency assistance for the redevelopment of abandoned homes. This program would authorize HUD to buy foreclosed homes and rehabilitate homes at taxpayer expense.

- $1.5 billion for the HOME Investment Partnership Program, which provides formula grants to States and localities to fund activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership, or provide direct rental assistance to low-income people.
- $10 million for the Self-Help and Assisted Homeownership and Opportunity Program, which provides funds for eligible national and regional non-profit organizations to purchase home sites and develop or improve the infrastructure. Among the organizations that would likely receive funding through this program is ACORN, an organization that has been accused of practicing unlawful voter registration and intimidation techniques in the past.
- $1.5 billion for Homeless Assistance Grants for homeless shelter programs, housing relocation, rental assistance, legal services, credit repair, and utility payments.
- $100 million for the Office of Healthy Homes and Lead Hazard Control to conduct environmental reviews.

State Fiscal Stabilization Fund

- $79 billion for a "State Fiscal Stabilization Fund," which will be distributed to States based on total population and school-aged population. 61 percent of funds to the States will be used to support public elementary, secondary, and higher education. The remaining 39 percent of funding may be used for public safety and other government services, at the discretion of the Governor.
- $325 million authorization for an "Innovation Fund," which will provide financial rewards by the Education Department to schools and States which make progress in closing achievement gaps.

Division B—Other Provisions

<u>Tax Provisions</u>:

Making Work Pay Credit

- **The bill creates a new temporary refundable tax credit in 2009 and 2010**. The credit would be equal to the lesser of 6.2% of an individual's earned income, or $500 ($1,000 for married couples filing jointly). If the amount of the refundable credit is more than the individuals owes in federal income taxes, the excess amount must be paid directly to the taxpayer. The tax credit would phase-out for individuals with adjusted gross income of $75,000 ($150,000 for married couples filing jointly). Many of these credits will be made in direct payments to taxpayers that pay little or no income taxes. The Joint Committee on Taxation (JCT) estimates that this new refundable tax credit will cost $145.3 billion.

Additional Tax Relief for Families with Children

- **Increases the refundable EITC credit for families with three or more children** to 45% of their first $12,570 in earnings for 2009 and 2010. Currently, eligible families may claim an EITC credit of up to 40% of the first $12,570 of their earnings. This provision would increase the maximum refundable EITC credit available for families from $5,028 to $5,656.
- **Increases the threshold at which the EITC credit begins to phase-down for married couples** filing jointly to $5,000 above the threshold for single filers. For example, the EITC for a single filer with one child currently begins to phase-down when the filer reaches annual income of $16,420. For married couples with one child filing jointly the phase-down begins when their combined income reaches $19,540—or $3,120 more than single filers. The bill would increase the married joint-filing threshold by $5,000 above the single filer threshold, or, in this case,

$21,420. According to the JCT, the two prior changes to the EITC formula for families would cost $4.6 billion.

- **Expands the refundable portion of the child tax credit** by eliminating the $8,500 earnings floor that currently exists. Under current law, the child tax credit is refundable up to 15% of a taxpayer's earnings above $8,500. The bill would eliminate $8,500 floor, allowing 15% of all the taxpayer's earning to be refundable through the child tax credit. The provision would be in effect for 2009 and 2010. JCT estimates that the provision would cost $18.2 billion.

American Opportunity Tax Credit

- **Expands the non-refundable Hope Scholarship Tax Credit program**, which gives tax credits to eligible students and parents for the cost of post-secondary tuition and expenses. At present, the program provides up to $1,800 in non-refundable tax credits to qualified parents or students for the first two years of post-secondary education. The bill would expand the credit for 2009 and 2010 to provide up to $2,500 in tax credits per student and extend the tax credit availability to four years.
- **Expands the income threshold for participation in the Hope Scholarship tax credit program**. Currently, students and families with modified adjusted gross incomes (AGI) between $50,000 and $60,000 (or $100,000 to $120,000 for married joint filers) are phased-out of eligibility. This bill extends eligibility to parents and students with modified AGI of $80,000 to $90,000 (or $160,000 to $180,000 for married joint filers).
- **Expands the definition of qualified tuition and expenses to include textbooks**.
- **Makes 40% of Hope Scholarship tax credits refundable**. Under this new provision, the federal government would be responsible to pay up to 40% of the tax credit directly to the taxpayer if the amount of the credit is more than the individuals owes in federal income taxes. According to JCT, this provision would cost $3.4 billion.

Housing Incentives

- **The legislation waives the recapture of the refundable tax credits given to first-time home buyers** who bought their home between December 31, 2008, and July 1, 2009. Under current law, first-time home buyers are eligible to receive a refundable credit of the lesser of 10% of the home's cost or $7,500. The credit, however, is recaptured by the government, meaning the home buyer must pay back the credit through increased tax payments over a 15 year span. The bill would waive the current recapture requirement if the home was purchased within the specified time period and the owner keeps the home as their principle residence for three years. The JCT estimates that this provision would save taxpayers $2.6 billion.

Tax Incentives for Business

- Extends bonus depreciation that allows businesses to make a tax deduction of 50% of the cost of depreciable capital expenditures within the first year of the property's purchase. Normally, depreciable property deductions are taken over time based on a depreciation formula. The 50% first-year deduction would be extended by this legislation through 2009—retroactively effective for any property put into service after December 31, 2008. The JCT estimates that this provision would save taxpayer's $5 billion.
- In 2008, a taxpayer operating a small business was allowed to deduct up to $250,000 from their taxes for the cost of property purchased for the business. The $250,000 deduction was reduced by each dollar the taxpayer spent for qualified business property over $800,000 in the same year. The amounts of this provision are scheduled to drop in 2009 and 2010. The maximum deduction will be decreased to $125,000 per year. That amount will be reduced by the amount of property purchased above $500,000. The deduction is scheduled to return to the $250,000 and $800,000 amounts in 2011. The bill would extend the $250,000 and $800,000 amounts to 2009 and 2010. JCT estimates that this provision would save taxpayers $41 million.

- **Extends the net operating loss (NOL) carryback period** from two years to five years for NOLs that occurred in 2008 and 2009. A NOL is defined as the amount by which a company or taxpayer's business deductions are greater than its gross income in a given year. A company or taxpayer can apply a NOL to past tax payments and receive a refund or apply the NOL to reduce future tax payments. Under current law, NOLs carryback two years, which allows a company or taxpayer to receive a refund for a NOL in the past two taxable years. This legislation would extend the carryback period to five years in the case of a NOL occurring in 2008 and 2009. The bill would also suspend a current restriction against taxpayer's applying NOL deductions to reduce alternative minimum taxes by more than 90%. This carryback benefit would not be available to any companies that received assistance from the Troubled Asset Relief Program (TARP), Fannie Mae, or Freddie Mac. The JCT estimates that this provision would save taxpayers $17 billion.
- **Expands the Work Opportunity Tax Credit (WOTC)** to provide tax credits to employers that hire unemployed veterans and "disconnected youth." Under current law, employers are eligible to receive a tax credit equal to 40% of the first $6,000 in wages paid to employees from nine specific groups (families receiving TANF, veterans with disabilities or receiving food stamps, ex-felons, community residents, vocational rehabilitation referrals, summer youth employees, food stamp recipients, SSI recipients, and long-term family assistance recipients). The bill would include unemployed veterans and disconnected youth as targeted groups for the WOTC. Disconnected youth would be defined as individuals between 16 and 25 years of age that have not been regularly employed in the past six months. The JCT estimates that this provision would save taxpayers $208 million.
- **Repeals Internal Revenue Service Notice 2008-83**, which allowed taxpayers to claim broader deductions for built-in losses associated with an ownership change. The repeal of this notice will limit deduction claims that taxpayer's may make for built-in losses associated with ownership transfers. Because this provision would reduce deduction claims, the Ways and Means Committee estimates that the provision will raise taxes by $6.9 billion.

Fiscal Relief for States and Local Governments

- **Excludes investments in tax-exempt municipal bonds issued by States and localities for the purpose of determining a financial institution's interest expenses** during 2008 and 2009. The bill would only exclude such investments if they accounted for no more than 2% of the institution's assets. Under current law, financial institutions are not allowed to take deductions for interest expenses that can be allocated to tax-exempt municipal bonds. The bill would also expand the definition of a "qualified small issuer" for 2009 and 2010. Qualified small issuers are exempt from rules prohibiting financial institutions from deducting interest expenses that can be allocated to investments in municipal bonds. The legislation is intended to increase financial institution's investments in tax-exempt municipal bonds that State and local governments use to fund projects. JTC estimates that these two provisions would provide $3.2 billion in tax relief.
- **Excludes the alternative minimum tax (AMT) from applying to private activity bonds** issued in 2009 and 2010. Private activity bonds are issued by State and local governments for financing projects undertaken by one or more private parties. Interest on private activity bonds is currently subject to the AMT, which makes them less attractive to investors. This provision would provide $481 million in tax relief.
- **Creates a new category of tax-credit bonds, known as qualified school construction bonds**. Tax-credit bonds are bonds on which the federal government pays interest in the form of tax credits against the federal income tax liability of the bondholder. The qualified school construction bonds would be issued by State and local governments for the construction, repair, rehabilitation, acquisition, or debt reduction of public schools. The JCT estimates that this provision would provide $8.9 billion in tax relief.

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- **Extends and expands the qualified zone academy bond (QZAB) program** to authorize the issuance of an addition $1.4 billion to the program annually for 2009 and 2010. The QZAB program authorizes State and local governments to issues tax-credit bonds for "qualified zone academies" to purchase equipment, finance renovations, develop course material, and train teachers. A qualified zone academy is generally defined as a school district with low-income populations. QZAB issues bonds on which the federal government pays interest in the form of tax credits to the bondholder. JCT estimates that this provision would provide $1 billion in tax relief.
- **Allows State and local governments the option** of issuing federally subsidized bonds as tax-exempt bonds or tax-credit bonds. Currently, the majority of State and local bonds are issued as tax-exempt bonds. Tax-exempt bonds are bonds which the federal government subsidizes by exempting interest accrued on those bonds from federal income tax. Tax-credit bonds are bonds which the federal government subsidizes in the form of tax credits given to the bondholder. Under current law there are only four programs that provide tax-credit bonds.
- **Allows State and local governments to receive direct payment from the federal government in lieu of federal tax-credits for bondholders** that would be issued through the sale of tax-credit bonds for 2009 and 2010. JCT estimates that the previous two provisions regarding federal bond payments to States would cost $18.3 billion.
- **Creates a new category of tax-credit bonds, known as recovery zone bonds**. The bill would authorize $25 billion for investment in recovery zones, which are designated by State and local governments. Recovery zones must bee areas with significant poverty, unemployment, or rate of foreclosure. Investment in these areas may include using the bonds to fund job training, education, and economic development. The JCT estimates that this provision would provide $4.9 billion in tax relief.
- **Allows Indian tribal governments to issue up to $2 billion in tribal economic development bonds** to fund improvement projects. Any interest earned by a bondholder would be exempt from federal income tax. Under current law, Indian tribal governments may only issue tax-exempt bonds to fund a project that provides an essential governmental function. This restriction would not apply to tribal economic development bonds. The JCT estimates that this provision would provide $315 million in tax relief.
- **Repeals a 3% withholding on payments to contractors providing property or services to federal, State, and local governments** after December 31, 2010. Under current law, the withholding would apply to all payments to contractors made after 2010. The JCT predicts that this provision would cost $10.9 billion.

Energy Tax Initiatives

- **Extends the placed-in-service date requirement for the renewable energy production tax credit** by three years. The placed-in-service date requirement would be extended through December 31, 2013 (except for wind, which would be extended through December 31, 2012). Facilities must be placed-in-service by the required dates to receive the credit and are eligible to claim the credit for 10 years. The base credit amount is 2.1 cents per kilowatt-hour of electricity produced, adjusted for inflation annually. The credit is provided to facilities that produce electricity from wind, closed-loop biomass, open-loop biomass, geothermal energy, solid waste, and hydropower. The JCT estimates that this provision would provide $13.1 billion in tax incentives.
- **Allows producers of renewable energy facilities that are placed in service in 2009 and 2010 to take a one-time, 30% tax credit** for their initial investment in lieu of the 10-year renewable energy production tax credit. Under current law, the 30% investment credit is available to solar facilities, but not to facilities that produce wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine renewable energy. JCT estimates that this provision would provide $218 million in tax incentives.

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- Under current law, a 10% tax credit is available for the cost of equipment used to produce solar or geothermal energy. The amount of the credit is based on the price of the equipment. Current statutes require that if the equipment was financed with a subsidy, the price of equipment purchased be reduced by the amount of the subsidy—thus reducing the amount of the credit. The bill would repeal this statute and base the credit on the total cost of the equipment regardless of other subsidies. The JCT estimates that this provision would provide $604 million in tax incentives.
- **Expands the Clean Renewable Energy Bonds (CREB) program** to authorize the issuance of an addition $1.6 billion in bonds. The CREB program provides tax-credit bonds issued by States and localities to finance renewable energy facilities. The federal government would pay the interest on these bonds in the form of federal tax credits given to the bondholder. The JCT estimates that this provision would provide $578 million in tax incentives.
- **Expands the qualified energy conservation bonds program** to authorize the issuance of an addition $2.4 billion in bonds. The bonds issued by States and localities would be used for initiatives to reduces green-house gas emissions and promote energy efficiency. The bonds are qualified tax-credit bonds, therefore, the federal government would pay the interest on these bonds in the form of federal tax credits given to the bondholder. The JCT estimates that this provision would provide $803 million in tax incentives.
- **Expands and extends tax credits for energy efficient improvements** to existing homes in a number of ways:
    - The bill increases the current 10% tax credit for the purchase of energy efficiency home improvements to 30%.
    - Under current law tax credits are capped at $50 for any advance fan, $150 for a natural gas, propane, or oil furnace, and $300 for an item of energy-efficient building property. The legislation eliminates the current item-by-item cap and replaces it with an aggregate $1,500 cap.
    - The bill also extends the tax credit program for one year through 2010.
    - The JCT estimates that these provisions would provide $4.2 billion in tax incentives.
- **Increases the tax credit for gas stations and individuals that install alternative fuel pumps** from 30% to 50% of the cost of installation in 2009 and 2010. The bill also increases the cap for the credit from $30,000 to $50,000 for gas stations and $1,000 to $2,000 for individuals. The JCT estimates that this provision would provide $54 million in tax incentives.
- The legislation creates **a new 20% tax credit in 2009 and 2010 for research expenditures** in the fields of fuel cells, battery technology, renewable energy, energy conservation technology, efficient transmission of electricity, and carbon capture technology. The JCT estimates that this provision would provide $18 million in tax incentives.

Other Provisions

- Applies Davis-Bacon prevailing wage requirements to any projects carried out by States, localities, or private entities with funds from clean renewable energy bonds, energy conservation bonds, zone academy bonds, school construction bonds, and zone economic development bonds.
- Authorizes the Secretary of Energy to provide grants to each taxpayer who places a renewable energy facility in service in 2009 or 2010 in lieu of any energy tax credits that the taxpayer would otherwise be eligible to receive. The JCT estimates that this provision would cost $5 million over a ten year period.

Assistance for Unemployed Workers and Others

Unemployment Insurance

- Extends the current extension of unemployment insurance (UI), which is scheduled to expire on March 31, 2009, through December 31, 2009. This provision would also extend the program's phase-out period from August 27, 2009, to March 31, 2010. The extension is estimated to cost $27 billion.

- Increases temporarily the weekly unemployment benefit average by $25, to $325, through December 31, 2009. The federal government would cover the entire cost of the increase to States. The Committee on Ways and Means estimates that this provision would cost $9 billion.
- Provides a one-time transfer of federal funds to States with unemployment insurance compensation laws that cover part-time workers, people who quit their jobs for "compelling family reasons," dependants of unemployed people, and long-term unemployed individuals in job training. The one-time funding would give States an incentive to add more individuals to unemployment insurance rolls, which the States would be required to pay for after the federal funds had been used. The bill would authorize $7 billion for this provision.

TANF, SSI, and Child Support

- Creates a $2 billion federal emergency fund for the Temporary Assistance to Needy Families (TANF) program which provides cash assistance to low-income individuals and families. The emergency fund would be used to provide grants to States that have increased caseloads or provide short-term cash benefit spending. The bill waives requirements that obligate states to consider rising caseloads when determining TANF work requirements. Thus, the legislation would allow States to increase caseloads without increasing the number of individuals required to obtain work, which was a key component of the 1997 welfare reform that has dramatically decreased the number of Americans dependant welfare.
- Requires the Commissioner of Social Security to make a one-time monthly payment to Supplemental Security Income (SSI) recipient whose benefits were cut if in the previous two months because their income, or the income of their spouse, exceeded the programs income limits.
- Waives a current restriction to allow States to claim federal matching funds when they spend federal child support incentive funds in 2009 and 2010. The original restriction was passed in the Deficit Reduction Act of 2005 in order to close the so-called "double dipping" loophole. CBO estimates that waiving the restriction for two years would cost $1 billion.

Temporary COBRA Premium Subsidy

- Provisions of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) provide for separated employees and their dependents to remain on their previous employer's group policy for 18 months, or up to 36 months in some cases. Employers are permitted to charge former workers electing COBRA coverage the full cost of their group insurance premiums, plus a 2% fee to cover administrative costs.
- Provides a 65% premium subsidy to employers to cover the costs of individuals electing COBRA coverage, provided such election comes as a result of the individual's involuntarily termination from employment during the period from September 1, 2008, to December 31, 2009. The subsidy would continue for a maximum of 12 months, but would terminate once the individual becomes eligible for other employer-based coverage or Medicare.
- Re-opens the COBRA election period for certain individuals, who had previously declined COBRA coverage, to allow them to accept continuation coverage in light of the new federal subsidy. Any pre-existing condition exclusions as a result of the temporary lapse in coverage would be waived if the former employee chooses to accept the COBRA coverage with the new federal subsidy. The bill imposes various notification requirements on employers to inform their separated workers about the COBRA subsidy program.
- Includes a 110% penalty for individuals who lose eligibility for the COBRA premium subsidy (due to eligibility for other group coverage), but fail to report their changed status. However, because the reporting mechanism for individuals to report their changed status lacks transparency (i.e. employers may not know their former employees have obtained another job, or whether that job includes an offer of group health insurance), some Members may be concerned that the premium

subsidy program could be ripe for abuse by individuals who could obtain a "better deal" by remaining on the COBRA subsidy.

Permanent COBRA Expansion:

- Includes a permanent expansion of COBRA in the case of "older or long-term employees." Specifically, the bill would permit former employees over age 55, or those with at least 10 years of service with the employer, to remain on COBRA until becoming eligible for Medicare. These provisions are similar to language inserted by the House Rules Committee into H.R. 3920, the Trade Adjustment Assistance (TAA) Reauthorization Act, which passed the House by a by a 264-157 vote on October 31, 2007, but was never considered by the Senate.

  Particularly as a 2006 study found that employers' costs for administering the COBRA plan are already double the 2% maximum administrative fee permitted under the statute, some Members may be concerned that permitting former employees to remain on COBRA for decades could result in even higher administrative costs for firms due to the expanded requirements of the unfunded federal mandate.

  Because the COBRA statute requires former employees to pay the full cost of their group health insurance, the individuals most likely to elect continuation coverage would be those for whom the coverage has value despite its high cost—i.e. those with significant expected medical expenses. Consistent with this premise, the 2006 employer study also found that workers electing COBRA coverage had overall health costs 45% greater than the active workers employed by the reporting firms. Some Members may be concerned that allowing workers to retain COBRA coverage would further exacerbate these adverse selection concerns, raising costs for all the participants in the group plan and potentially encouraging some employers to drop coverage altogether rather than absorbing these higher costs.

Medicaid Coverage for Unemployed

- Provides a state option to cover unemployed workers through their Medicaid programs—with the federal government paying 100% of the cost of such coverage. Eligible individuals would include individuals receiving unemployment compensation, or those formerly receiving unemployment compensation whose benefits were exhausted after July 1, 2008. Other eligible individuals include those who were involuntarily separated from employment between September 2008 and January 2011, whose gross family income remains below 200% of the federal poverty level (FPL, $42,400 for a family of four in 2008), or who are eligible for food stamp assistance. Eligible populations also include spouses and dependent children under age 19 of the individuals listed above.

  Some Members may be concerned that having the federal government pay for the entire cost of covering unemployed individuals through Medicaid provides no incentive for states to police fraud and abuse of the program by these populations. Moreover, because the bill does not sunset the program to cover unemployed workers, only the 100% federal match, some Members may be concerned about the implications of a significant expansion of government's role in providing health care under the guise of a "temporary" stimulus provision.

- Makes eligible for Medicaid assistance all individuals in the groups listed above who are "not otherwise covered under creditable coverage." Some Members may be concerned that because the bill language prohibits participation in the program only for individuals *actually covered* by another policy—as opposed to all those *eligible for other coverage*, as with the COBRA premium subsidy listed above—the bill provides eligible individuals with a perverse incentive to remain on federal health insurance rolls and obtain free health insurance, rather than switch to a group plan where higher premiums and co-pays likely would apply.

- States that "no income or resources test shall be applied with respect to" any of the eligible groups listed above. Some Members may be concerned that this provision would therefore allow fired CEOs formerly making millions of dollars in compensation to obtain free health care benefits from the federal government.

Health Information Technology

Federal Office and Standards

- The bill contains language amending the Public Health Service Act and the Social Security Act designed to accelerate the adoption of health information technology. The bill codifies the Office of the National Coordinator for Health Information Technology (ONCHIT) within the Department of Health and Human Services (HHS), which had previously been established by Executive Order. The Coordinator will be charged with updating the federal government's health IT strategic plan and developing a program for voluntary certification of health information technology, among other duties.
- The bill establishes a Policy Committee and a Standards Committee to make recommendations to the Coordinator on national strategy and health IT standards. The Policy Committee will determine which areas require federal standards and certification criteria, and the Standards Committee will recommend to the Coordinator specific standards and criteria in the areas highlighted by the Policy Committee.
- The bill provides the Department with a 90-day window to adopt or reject the standards proposed by the Standards Committee, and requires the Department to establish an initial set of standards and certification criteria by December 31, 2009. The bill also requires federal agencies and federal contractors to utilize information technology systems and standards consistent with those promulgated by the Department. The bill authorizes $250 million in appropriations for ONCHIT for Fiscal Year 2009.
- The bill requires the Coordinator to "support the development, routine updating, and provision" of electronic health record technology, "unless the Secretary determines that the needs and demands of providers are being substantially and adequately met through the marketplace," and permits the Coordinator to "impose a nominal fee" for providers choosing to use systems so developed. Some Members may be concerned that this provision may permit undue intervention by the federal government in the marketplace for health information technology.

Grant and Loan Funding

- The bill would establish programs designed to fund the implementation of health information technology, and authorizes such sums as may be necessary to carry out the programs for Fiscal Years 2009 through 2013. The bill would require the Department to "invest in the infrastructure necessary" to promote health IT nationwide, including IT architecture, electronic health records, training on best practices, and interoperability, including $300 million for regional efforts to support health information exchange.
- The bill creates a Health Information Technology Research Center to provide technical assistance and develop best practices on IT adoption and utilization, as well as additional regional centers affiliated with non-profit organizations that would receive financial assistance from the federal government for up to four years to supplement the national efforts. The bill provides that federal financial support may not exceed 50% of any applying organization's annual budget, except under certain circumstances.
- The bill establishes a grant program for states and other state-designated non-profit entities to "facilitate and expand the electronic movement" of health records, subject to state matching contributions of no more than $1 for every $3 in federal funding. The bill creates another grant program for states or Indian tribes to loan money to providers for adoption of, or training for the use of, electronic health records, and requires that entities receiving grants under this program

contribute at least $1 for every $5 in federal funding. Finally, the bill creates two grant programs—one for schools of medicine, the other for institutions of higher education—to develop curricula that integrate electronic health records into clinical training and education, subject to a match by the schools of at least 50%.

Medicare Payments

- The bill establishes a system of incentives and penalties related to Medicare reimbursement for providers to encourage the adoption of electronic health records. For physicians not working in a hospital setting, the bill provides for a bonus payment of 75% of Medicare billed claims, subject to total limitations of $41,000, paid out over five years. Incentives will begin in 2011, will be reduced for providers adopting health IT beginning after 2013, and will be eliminated entirely after 2015. The bill makes eligible for bonus payments all physicians receiving Medicare reimbursement, including physicians participating in Medicare Advantage Health Maintenance Organizations.
- The bill provides for reductions for non-adopters of health information technology, beginning with a 1% fee reduction in 2016, and continuing with a 2% reduction in 2017, a 3% reduction in 2018, and reductions of up to 5% 2019 and subsequent years. The Secretary may grant limited exceptions from the Medicare penalties for up to five years.
- For hospitals (including those affiliated with Medicare Advantage Health Maintenance Organizations), the bill provides a base incentive payment of $2 million for health IT adoption, coupled with a per-discharge payment of $200. Incentive payments (base and per-patient discharge) may total up to $6.37 million per hospital for the first year. (Note that this is an increase of nearly 50% in the maximum per-hospital payment from the originally introduced package.) Payments will be adjusted based on the percentage of Medicare patients treated by the hospital, and phased out entirely over four years, such that the maximum payment a hospital could receive would total more than $15.9 million. Payments would begin in Fiscal Year 2011, but that hospitals who fail to convert to electronic health records by 2016 shall not be eligible for the bonus payments.
- The bill further provides for adjustments to the annual "market-basket" hospital update, beginning in 2016. Hospitals who do not adopt electronic health records will see their payments reduced by 0.5% in 2016, 1% in 2017, and 1.5% in 2018 and subsequent years, unless the Secretary grants a limited five-year exception.
- The bill provides that the bonus payments outlined above shall not be taken into account when calculating beneficiaries' premiums under Medicare Parts A and B.
- The bill amends the Medicare Improvement Fund to shift funds from Fiscal Years 2016-2018 into Fiscal Years 2014 and 2015. While the Congressional Budget Office has written that this provision is budget-neutral, some Members may consider this timing shift a budgetary gimmick designed primarily to make future legislation compliant with five year PAYGO requirements under House rules. Some Members may therefore question this provision's relevance in a measure designed to spur economic growth and recovery.
- The bill authorizes and appropriates a total of $540 million—$60 million for each of Fiscal Years 2009 through 2015, and $30 million per year from 2016 through 2019—to allow the Centers for Medicare and Medicaid Services (CMS) to implement the IT incentive provisions.
- Some Members may believe that the size and scope of spending contemplated—up to $41,000 for every eligible physician, including practitioners who bill Medicare infrequently, such as chiropractors, and as much as $15.9 million per hospital—represent an inefficient use of government spending, particularly given widespread IT adoption in other industries without such heavy government subsidies. The Congressional Budget Office projects that passage of the bill's provisions will increase implementation of health IT by only 25%—from the 65% rate of physician adoption in 2019 under current law to 90%, and has stated that it "anticipates near-universal adoption of health IT within the next quarter-century even without legislative action." Some Members may therefore find the expenditure of $30 billion to achieve this marginal

improvement in health IT adoption inefficient, particularly as it would not target subsidies to those providers who otherwise would not have adopted electronic health records.

Medicaid Funding

- The bill includes provides for a 100% federal FMAP match for certain Medicaid providers related to electronic health records technology, and a 90% match for administrative expenses associated with. In order to qualify for the enhanced federal match, providers' Medicaid patients must exceed 30% of their overall patient load; children's hospitals, acute care hospitals with at least a 10% Medicaid patient load, and federally qualified health centers with a 30% or greater Medicaid patient load will also qualify for the Medicaid payments. Payments under these provisions may not exceed a total of $75,000—$25,000 for the purchase of electronic health record technology, and up to $10,000 per year for five years for operation and maintenance. Physicians (but not hospitals) receiving Medicaid funds would have to pay 15% of the cost of any electronic health records technology they acquire.
- The bill provides that incentives under the Medicaid formula shall not exceed those provided under the Medicare formula established above, except that a provider's Medicaid patient load may be substituted for its Medicare patient load in determining a higher payment level. However, in order to receive Medicaid funding, providers must decline to accept the Medicare health IT bonus payments discussed above.
- The bill authorizes and appropriates a total of $360 million—$40 million for each of Fiscal Years 2009 through 2015, and $20 million per year from 2016 through 2019—to allow CMS to implement the Medicaid incentive provisions.
- CBO estimates that both the Medicare and Medicaid bonus payments will total $30 billion over ten years—$17.7 billion for Medicare and $12.4 billion for Medicaid—along with $900 million in mandatory administrative funding for CMS. However, CBO estimates that increased IT adoption will yield baseline savings in Medicare, Medicaid, and the Federal Employee Health Benefits Program (FEHBP) totaling $12.3 billion over ten years. CBO also estimates that revenues will increase under the health IT provisions, as slightly lower health costs will result in individuals excluding slightly less of their salaries from payroll and income taxes through the exclusion for employer-provided health insurance. Thus CBO scores the net cost of the Medicare and Medicaid bonus payment provisions as $17.1 billion over ten years.
- The bill creates a new $600 million grant program for up to 10 states to provide payment incentives to nursing facilities in order to facilitate the use of health information technology.

Privacy

- The bill extends the privacy and security provisions included in the Health Insurance Portability and Accountability Act (HIPAA, P.L. 104-191), as well as the civil and criminal penalties established in such legislation, from "covered entities"—health plans and other providers who transmit electronic health information—to the "business associates" of those entities. In general, the Privacy Rule requires covered entities to obtain consent for the disclosure of protected health information—defined as health information that identifies the individual, or can reasonably be expected to identify the individual—except when related to "treatment, payment, or health care operations." The regulations include several exceptions to the pre-disclosure consent requirement, including public health surveillance, activities related to law enforcement, scientific research, and serious threats to health and safety. The HIPAA Security Rule requires covered entities and their business associates to safeguard protected health information held electronically, including administrative, physical, and technical safeguards that covered entities must follow. Some Members may be concerned about the expansion of the full HIPAA privacy and security requirements to business associates, particularly given the additional unfunded mandates placed on businesses elsewhere in the bill.
- The bill establishes new higher, tiered penalties for failure to comply with HIPAA requirements, up to a maximum of $50,000 per violation, and $1,500,000 per year, due to willful neglect that is

not corrected. Current law provides for penalties of up to $100 per violation and $25,000 per year.

- The bill would permit state attorneys general to bring action against companies "in any case in which the attorney general…has reason to believe that an interest of one or more residents of that state has been or is threatened or adversely affected by any person." Attorneys general may file actions "in a district court of the United States of appropriate jurisdiction" seeking either an injunction or civil penalties for a general failure to comply with standards. State attorneys general must first notify the Secretary of intent to file such action, and may not bring actions against relevant persons if and when the Secretary has a separate action pending. Some Members may be concerned that these provisions, particularly when coupled with the provisions permitting affected individuals to receive a portion of penalties awarded, could lead to a proliferation of lawsuits against applicable individuals and entities for real or perceived security violations, which could discourage the adoption of health information technology that the bill is intended to promote.

Other Medicare Provisions

- The bill places a one-year moratorium on CMS' introduction of a wage adjustment related to hospice reimbursement, and halts for one year a phase-out of capital costs paid to certain teaching hospitals in the form of a capital indirect medical education (IME) payment. Some
- Lastly, the bill makes certain "technical corrections" regarding long-term care hospitals, specifically as it relates to implementation of a rule for referrals from non co-located facilities. According to CMS, at least one of these "corrections" will affect only three hospitals—two located in North Dakota, and one located in Connecticut. Some Members may believe this provision constitutes an authorizing earmark, and therefore believe its inclusion is inconsistent with President Obama's pledge that economic recovery legislation should not include any "pork-barrel" spending.

Health Care Aid to the States

Increase in Federal Medicaid Match

- The federal share of spending on states' Medicaid programs is determined through the Federal Medical Assistance Percentage (FMAP). Based on a formula that compares a state's *per capita* income to *per capita* income nationwide—a mechanism designed to gauge a state's relative wealth—the FMAP can range from a low of 50% to a maximum of 83%.
- The bill would provide an across-the-board FMAP increase of 4.9% for a total of nine calendar quarters—from October 1, 2008 through December 31, 2010. The bill also includes language providing that no state's FMAP percentage (exclusive of the 4.9% increase) shall decline during the nine calendar quarter period. Both the scope and the length of the FMAP increase exceed the 2.95% increase in the federal match rate for five fiscal quarters passed to help states during the last economic downturn as part of tax and budget reconciliation legislation (P.L. 108-27).
- The bill includes further increases in the FMAP percentage for "high unemployment states," which are defined by using a 3-month average unemployment rate. If, when compared to any prior 3-month period after January 1, 2006, unemployment in a state has increased 1.5%, the FMAP will be increased by 6%; if unemployment has increased 2.5%, the FMAP will be increased by 12%; and if unemployment has increased 3.5%, the FMAP will be increased by 14%. Once qualifying as having high unemployment, a state's FMAP increases outlined above will remain until at least July 1, 2010, even if unemployment in that state falls prior to that date.
- The bill includes "maintenance of effort" provisions such that states wishing to receive the FMAP increases may not impose more restrictive eligibility standards than those in effect on July 1, 2008 (unless the states retroactively remove such restrictions) and may not deposit any amounts "directly or indirectly" into a state's rainy day fund or reserve account.

- Some Members may have concerns about this increase in FMAP funding, included but not limited to:
  - The provisions as drafted could result in a FMAP rate for some states approaching 100%, meaning that the federal government would be paying nearly the full share of a state's Medicaid expenses—a significant alteration of the traditional state-federal Medicaid partnership, and one which would give states a strong incentive to shift additional costs (whether directly health related or not) on to the federal government's books.
  - An increase in the federal Medicaid match provides no incentive for states to reform their Medicaid programs to improve the quality of beneficiary care while reducing the growth in health costs—and by providing additional federal dollars, may provide states with a perverse incentive not to accelerate reform.
  - An FMAP increase will not halt states from expanding their Medicaid programs at an unsustainable rate, as evidenced by one study's findings that state Medicaid expenditures during the economic "boom years" of 1994-2000 outpaced both state GDP growth and states' revenue growth.
  - Increasing the federal Medicaid match does nothing to reform the flawed FMAP formula itself. The Congressional Budget Office in its December 2008 Budget Options report noted that the 50% minimum FMAP level results in nearly a dozen wealthy states receiving match rates significantly higher than they otherwise would have received; in one case, a state's FMAP level would be 12% absent the statutory minimum percentage. Members may therefore be concerned that increasing the federal Medicaid match would not reform a system where studies have indicated that ***wealthier states spend more on Medicaid than poorer ones***—exactly the opposite of FMAP's intended goal.

Moratoria on Anti-Fraud Regulations

- The bill would extend by three months—from April 1, 2009 to July 1, 2009—moratoria on the Centers for Medicare and Medicaid Services (CMS) from issuing six Medicaid regulations designed to bolster the fiscal integrity of the program. The regulations cover intergovernmental transfers, graduate medical education, school-based administrative and transportation services, rehabilitation services, targeted case management, and provider taxes. In addition, the bill extends the moratoria to cover a seventh regulation, relating to the definition of outpatient hospital services. Under a previous agreement between President Bush and Congressional Democrats negotiated in relation to the 2008 wartime supplemental appropriations act (P.L. 110-252), six of the proposed regulations were to be placed under the moratoria, while the outpatient hospital services regulation was to be implemented in full; this provision attempts to undo that agreement.
- Some Members may be concerned by attempts to repeal regulations that respond to various state abuses within the Medicaid program that have been documented by the Government Accountability Office (GAO) in reports dating back well over a decade. Some Members may also note that even the liberal Center for Budget and Policy Priorities has published a report noting that several of the abuses—specifically, intergovernmental transfers and provider taxes, which constitute the majority of the projected $42 billion in 10-year taxpayer savings associated with the regulations—are often "designed primarily to provide a windfall for state governments." Therefore, some Members may agree with the need to restore the Medicaid program's fiscal integrity and be concerned by Democrats' frequent attempts—including the third extension of these "temporary" moratoria—to undermine regulations that would affect less than 1% of the total Medicaid spending of nearly $5 trillion over the next decade.

Transitional Medical Assistance

- The bill extends for 18 months—through December 31, 2010—the Transitional Medical Assistance (TMA) program that provides Medicaid benefits for low-income families transitioning from welfare to work. Traditionally, the TMA provisions have been coupled with an extension of Title V

abstinence education funding during the passage of health care bills. However, the Title V funds were excluded from the bill language and will expire on July 1, 2009 absent further action.
- Particularly given the Obama Administration's desire for bipartisan agreement on economic stimulus provisions, some Members may be concerned at the removal of the Title V abstinence education funding and the potential end of this worthwhile program.

Family Planning Services
- The bill includes several provisions related to family planning services. Specifically, the bill would amend the definition of a "benchmark state Medicaid plan" to require family planning services for individuals with incomes up to the highest Medicaid income threshold in each state. The bill also permits states to establish "presumptive eligibility" programs for family planning services, which would allow Medicaid-eligible entities—including Planned Parenthood clinics—to enroll individuals in family planning services and "medical diagnosis and treatment services" connected with a family planning service, subject to a later determination of eligibility.
- Some Members may be concerned that these changes would, by altering the definition of a benchmark plan, undermine the flexibility that Republicans established in the Deficit Reduction Act to allow states to determine the design of their Medicaid plans. Some Members may also be concerned that the presumptive eligibility provisions would enable wealthy individuals to obtain free family planning services—and potentially other health care benefits—financed by the federal government, based on a certification by Planned Parenthood or other clinics.

Other Provisions
- The bill includes a 2.5% increase in Medicaid Disproportionate Share Hospital (DSH) payments for those hospitals treating a large percentage of low-income individuals. The increase covers Fiscal Years 2009 and 2010, and sunsets thereafter.

Broadband Communications

Wireless and Broadband Deployment Grants
- The bill authorizes the National Telecommunications and Information Administration (NTIA) to award grants to pay for broadband and wireless internet deployment in rural, suburban, and urban areas. Grants would be distributed through state government. The Committee on Energy and Commerce estimates that the NTIA would distribute $2.8 billion through this grant program.

Energy

Renewable Energy and Electric Power Loan Guarantee Program
- The bill would require the Secretary of Energy to make loan guarantees for commercial technology projects. The projects could only be for technology relating to renewable energy systems, electric power transmission systems, or "leading edge biofuel projects."
- The legislation stipulates that no loans under this program may exceed $500 million.
- The legislation requires that any projects carried out through grant funds be subject to Davis-Bacon prevailing wage restrictions. The program would sunset on September 30, 2011.

Weatherization Assistance Program Amendments
- The bill would provide funds for the Weatherization Assistance Program to pay for weatherization projects for moderate income individual's homes. The bill also increases program eligibility from 150% of the federal poverty level to 200%. The bill would also double the maximum per-residence program benefit from $2,500 to $5,000.

COST

According to the Congressional Budget Office (CBO) the bill includes $816 billion in new spending and tax provisions. The bill includes $524 billion in spending provisions over ten years. H.R. 1 includes $355.9 billion in new discretionary spending and $169 billion in mandatory spending. According to CBO, the bill also includes $291.7 billion in tax provisions, which includes $79.9 billion in spending on refundable tax credits that is scored as direct spending.

STAFF CONTACT

For further information on any tax or spending provisions contact Andy Koenig at andy.koenig@mail.house.gov or at 6-2302.

For further information on any health provisions contact Chris Jacobs at christopher.jacobs@mail.house.gov or at 6-2302.